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March 30, 2017

Honorable Brian P. Kemp
 Secretary of State
 Georgia Department of State
 214 State Capitol
 Atlanta, GA 30334

Re: Non-compliance with the National Voter Registration Act of 1993

Dear Secretary Kemp:

We write on behalf of the Georgia State Conference of the NAACP, the eligible voters it represents, and others similarly situated, to notify you that your office and the State of Georgia are in violation of Section 8 of the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. § 20507. Section 8(a)(1) of the NVRA requires that each state shall “ensure that any eligible applicant is registered to vote in an election” if the applicant has registered to vote “not later than the lesser of 30 days, or the period provided by State law, before the date of the election.” 52 U.S.C. § 20507(a)(1).

A person is registered to vote under Section 8 when “the valid voter registration form of the applicant” is: (1) “submitted to the appropriate State motor vehicle authority” in accordance with 52 U.S.C. §20504 (registration by application simultaneous with an application for a motor vehicle driver's license); (2) submitted by postmarked mail in accordance with 52 U.S.C. §20505; (3) “accepted at the voter registration agency” in accordance with 52 U.S.C. §20506; or (4) otherwise “received by the appropriate State election official.” 52 U.S.C. §§ 20507(a)(1)(A)–(D). *See also Arizona Democratic Party v. Reagan*, No. CV-16-03618-PHX-SPL, 2016 WL 6523427, at *13, *16 (D. Ariz. Nov. 3, 2016) (holding that the Arizona Secretary of State violated the NVRA because the deadline to register by postmarked mail was 31 days before an election and the deadline to register in-person at the MVD was 32 days before an election).

The NVRA defines “election” with reference to the Federal Election Campaign Act of 1971 (FECA). 52 U.S.C. § 20502(1) (citing 52 U.S.C. § 30101(1)(A)). FECA defines “election” as “a general, special, primary, or runoff election.” *Id.* Elections for federal office are defined so as to include those for a “Representative in... Congress.” 52 U.S.C. § 30101(3). Not only does the FECA’s definition of the term “election” specifically include runoff elections, the Tenth Circuit has construed the NVRA’s definition of “election” broadly, finding

EXHIBIT A



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that the NVRA “applies expressly to all federal general and primary elections, including presidential elections.” *Fish v. Kobach*, 840 F.3d 710, 719 n. 7 (10th Cir. 2016). In *Janvey v. Democratic Senatorial Campaign Comm.*, 793 F. Supp. 2d 825 (N.D. Tex. 2011), the district court noted that, when enacting FECA, Congress chose to adopt the Senate version’s broader definition of “election” that included primary and other nominating elections. *Id.* at 844 n. 26.

The NVRA’s clear mandate directly conflicts with Georgia law. To be eligible to vote in a Georgia election, individuals must apply to register to vote by the fifth Monday prior to Election Day. O.C.G.A. § 21-2-224(b). Both the Georgia Constitution and the Georgia Code treat runoff and special runoff elections as continuations of the initial election when a candidate fails to receive a majority of the votes. In particular, Article II of the Georgia Constitution provides:

A run-off election shall be a continuation of the general election and only persons who were entitled to vote in the general election shall be entitled to vote therein; and only those votes cast for the persons designated for the runoff shall be counted in the tabulation and canvass of the votes cast.

GA. CONST. art. II, § II, para. II. Additionally, Title 21 of the Georgia Code requires that voters register by the initial election deadline in order to be able to vote in runoff elections:

The run-off primary, special primary runoff, run-off election, or special election runoff shall be a continuation of the primary, special primary, election, or special election for the particular office concerned. Only the electors who were duly registered to vote and not subsequently deemed disqualified to vote in the primary, special primary, election, or special election for candidates for that particular office shall be entitled to vote therein...

O.C.G.A. § 21-2-501(a).

The upcoming Georgia Sixth Congressional District special election exemplifies how the above-mentioned provisions of Georgia law violate the NVRA. Under state law, if there is a runoff election to decide the winner of the contest for Georgia’s Sixth Congressional District on June 20, 2017, the registration deadline for that election would be March 20, 2017. *See Exhibit 1*. Section 8(a)(1) of the NVRA, however, provides that individuals who register between March 21 and May 21, 2017, are eligible to vote in a runoff election held on June 20, 2017. Failing to comply with the NVRA would result in numerous eligible citizens



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being denied the opportunity to cast a ballot that will count in that runoff election, if it is held.

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Please be advised that this letter serves as written notice pursuant to 52 U.S.C. § 20510(b). These violations of Section 8 of the NVRA are current and ongoing. We are, of course, hoping that an amicable resolution can be reached swiftly. Please contact the undersigned to resolve this matter.

Sincerely,

A handwritten signature in blue ink that reads 'Kristen Clarke'.

Kristen Clarke
President and Executive Director
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2017 ELECTIONS AND VOTER REGISTRATION CALENDAR

ELECTIONS AND VOTER REGISTRATION CALENDAR

2017 ELECTION EVENT DATES:

Elections

	Voter Registration Deadline	Election Date
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Special Election Date to Fill Vacancies & Present Questions

February 21, 2017	March 21, 2017
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Special Election Runoff Date

February 21, 2017	April 18, 2017
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[6th Congressional District Special Election Date](#)

March 20, 2017	April 18, 2017
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[6th Congressional District Special Election Runoff Date \(if needed\)](#)

March 20, 2017	June 20, 2017
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Special Election Date to Fill Vacancies

May 22, 2017	June 20, 2017
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Special Election Runoff Date

May 22, 2017	July 18, 2017
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Special Election Date to Fill Vacancies

August 21, 2017	September 19, 2017
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Special Election Runoff Date

August 21, 2017	October 17, 2017
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General Election/Special Election Date to Fill Vacancies & Present Questions

October 10, 2017	November 7, 2017
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General Election/Special Election Runoff Date

October 10, 2017	December 5, 2017
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2017 KEY DATES:

January 6, 2017

Deadline to Mail or Issue Absentee Ballots for Federal Runoff. O.C.G.A. § 21-2-384(a)

EXHIBIT 1

Key Election Dates and Information

Military and Overseas Voting

Register to Vote

Where do I vote? (MVP)

QUICK LINKS

6TH CONGRESSIONAL DISTRICT SPECIAL ELECTION INFORMATION

2016 Certified Write-In Candidate Vote Totals

Information for Pending Voters

Vote for Success: Behind the Scenes

Proposed Constitutional Amendments

Voter Registration Drive

State Election Board

Online Complaints

Stop Voter Fraud

Great Seal

Vote Safe

FAQs

iVote - Students / Educators

Advance Voting Info.

Intent to Tabulate Early

GA Voter ID Info.

Non-GA Resident Voter Information

Voter Information Videos

Elections Advisory Council

2017 Official Directory

LATEST ELECTIONS NEWS

6TH CONGRESSIONAL DISTRICT SPECIAL ELECTION INFORMATION
Wednesday, March 15th 2017

EIGHT CANDIDATES QUALIFY FOR STATE SENATE DISTRICT 32 RACE